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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

BAILEY KARR et al., Cross-complainants, Cross-defendants and Appellants, v. JANET HOOK, Cross-defendant, Cross-complainant and Appellant; PAUL COCO et al., Cross-defendants and Respondents.	B192846 (Los Angeles County Super. Ct. No. BC289913)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elizabeth A. Grimes, Judge. Affirmed.

Bailey Karr and Hillary Kelley, in pro. per., for Cross-complainants, Cross-defendants and Appellants.

Stanley D. Bowman, for Cross-defendant, Cross-complainant and Appellant Janet Hook.

Dale E. Washington, for Cross-defendants and Respondents.

INTRODUCTION

The case involves cross-appeals by Bailey Karr and Hillary Kelley on the one hand, and Janet Hook dba Atlantis Property Management on the other hand, from a judgment entered following a jury trial on two competing cross-complaints and from a postjudgment order. We affirm the judgment and the postjudgment order.

FACTUAL AND PROCEDURAL BACKGROUND

Bailey Karr and Hillary Kelley are mother and daughter and cotrustees of the Karr Family Trust. One of the assets in the Karr Family Trust was a rental house. Janet Hook owns Atlantis Property Management.[1] On or about January 1, 1991, Karr entered into an agreement with Hook to manage the property for one year. Hook continued managing the property until 2002, although the parties never formally extended the agreement.

In March 1997, Hook leased the property to the Coco family, who lived there until 2002. In 2003, three members of the Coco family filed an action against Karr and the trust for negligence and retaliatory eviction. The gist of the Coco family's claims was that the property had mold problems that caused them to be ill. The mold claim was eventually settled with a payment of $45,000 to the Coco family. But this did not end the litigation because the settlement did not resolve a cross-complaint for damages filed by Karr against three members of the Coco family and Hook (the Karr cross-complaint), for fraud and deceit, constructive fraud, and negligence. Hook cross-complained against Karr for indemnification under the parties' agreement (the Hook cross-complaint).

The Karr cross-complaint was tried to a jury. As far as is relevant here, on December 13, 2005, the jury returned special verdicts finding in favor of Karr and Kelley and against Paul and Kathy Coco on each theory of liability. It found in favor of Karr and Kelley and against Hook on the negligence theory, but in favor of Hook and against

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[1] For the most part, the interests of Karr, Kelley, and the trust are aligned and we sometimes refer to them collectively as Karr. Hook and Atlantis Property Management are referred to as Hook.

Karr and Kelley on all other theories. The jury found that Karr suffered economic damages based only on Paul and Kathy Coco's negligence, not as a result of any other misconduct by the Cocos or Hook. The jury awarded damages of $702.15.

After it was discovered that the Karr cross-complaint for constructive fraud against Hook had inadvertently been left out of the special verdict forms given to the jury, the parties agreed that the trial court could decide this issue, as well as the bifurcated issue of Hook's cross-complaint for indemnity. On January 25, 2006, the trial court: (1) denied Karr and Kelley's request for attorney's fees; (2) found that Karr's cross-complaint for constructive fraud was barred by the jury's verdict for Hook on the fraud causes of action in the Karr cross-complaint; and (3) found in favor of Karr and Kelley and against Hook on Hook's cross-complaint for indemnification.

DISCUSSION

A. *Karr and Kelley's Appeal*

Karr's sole contention on appeal is that the judgment should be vacated and the matter remanded for "a new trial in which [appellants] are finally permitted a hearing on the merits" of their claims. (Underscore omitted.) They argue that the trial court made "pre-trial determinations that handicapped [appellants'] trial preparations and prohibited them from presenting at trial competent proof of the allegations made in their cross-complaint. Therefore, . . . [Karr and Kelley] respectfully request that this Court examine not only the decisions individually, but the pattern of decisions that emerged over the course of several years of pre-trial hearings." (Underscore omitted.)

"When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700; see also *In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278.)

Here, inasmuch as Karr and Kelley's 25-page opening brief is devoid of any legal authority, we deem their appeal abandoned.[2]

B. *Hook's Cross-Appeal*

Hook contends the trial court erred in denying her claim for indemnity under the agreement's indemnification clause.[3] As we understand her argument, it is that the acts which formed the basis of the Karr cross-complaint occurred during the time that the parties were bound by the agreement and that the indemnification clause covers the $77,612.42 costs Hook incurred in defending against the Karr cross-complaint.

We begin with the standard of review. Hook's cross-complaint was bifurcated and decided by the trial court after the jury returned its verdict, based on briefs submitted by the parties. Because the trial court construed the indemnity clause "without the aid of conflicting extrinsic evidence, the interpretation of that agreement is a question of law for this court. [Citations.]" (*Rooz v. Kimmel* (1997) 55 Cal.App.4th 573, 585 (*Rooz*).)

"Indemnity involves ' "the obligation resting on one party to make good a loss or damage another party has incurred." ' [Citation.]" (*Rooz, supra*, 55 Cal.App.4th at

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[2] Karr's "joint reply and response brief" deals only with the Hook's indemnification claim, which we discuss in the following section. Neither brief specifically addresses the part of the January 25, 2006 order to which Karr might object -- denial of attorney's fees and the effect of the jury verdict on the constructive fraud cause of action against Hook.

At oral argument, Karr raised several points including, for example, errors relating to a motion in limine, a discovery motion, pleading defects, and the res judicata effect of the jury's finding on Karr's fraud cause of action. No legal authority or adequate record references were presented in support of these arguments.

[3] The indemnity clause at issue, paragraph 4(a) of the agreement, states that Karr "shall [¶] . . . [i]ndemnify and save [Atlantis Property Management] harmless from any and all costs, expenses, attorney's fees, suits, liabilities, damages or claim for damages, including but not limited to those arising out of any injury or death to any person or persons or damage to any property of any kind whatsoever and to whomsoever belonging, including Owner, in any way relating to the management of the premises by the Agent or the performance or exercise of any of the duties, obligations, powers or authorities herein or hereafter granted to the agent . . . ."

p. 582; *McCrary Construction Co. v. Metal Deck Specialists, Inc.* (2005) 133 Cal.App.4th 1528, 1536 (*McCrary*).) "An indemnity agreement may provide for indemnification against an indemnitee's own negligence, but such an agreement must be clear and explicit and is strictly construed against the indemnitee [here, Hook]." (*Rooz*, at p. 583.)

Provisions purporting to hold a party harmless "in any suit at law," "from all claims for damages to persons," and "from any cause whatsoever," without expressly mentioning an indemnitee's own negligence, are considered general indemnification clauses. (*McCrary, supra*, 133 Cal.App.4th at pp. 1537-1538.) Whether a general indemnity clause should be interpreted to indemnify the indemnitee for its own negligence depends in part on whether the negligence is "active" or "passive." (*Rooz, supra*, 55 Cal.App.4th at p. 583.)

" 'Passive negligence is found in mere nonfeasance, such as the failure to discover a dangerous condition or to perform a duty imposed by law. [Citations.] Active negligence, on the other hand, is found if an indemnitee has personally participated in an affirmative act of negligence, was connected with negligent acts or omissions by knowledge or acquiescence, or has failed to perform a precise duty which the indemnitee had agreed to perform.' [Citation.]" (*Rooz, supra*, 55 Cal.App.4th at p. 582, fn. 5.) By and large, while a general indemnity clause "may be construed to provide indemnity for a loss resulting in part from an indemnitee's *passive* negligence, they will not be interpreted to provide indemnity if an indemnitee has been *actively* negligent. [Citations.]" (*McCrary*, *supra*, 133 Cal.App.4th at p. 1537, citing *Rossmoor Sanitation, Inc. v. Pylon, Inc.* (1975) 13 Cal.3d 622, 628-629.)

Although the distinction between active and passive negligence may be a guide to interpretation of a general indemnity clause, it is not wholly dispositive. (*McCrary, supra*, 133 Cal.App.4th at p. 1538.) This is because an indemnitee may be entitled to indemnity for active negligence if the circumstances of the case and language of the contract evince that this was the intent of the parties. (*Ibid*.)

Here, the gist of the claims in the Karr cross-complaint was that Hook and the Coco family conspired to deceive Karr about the Cocos' financial status in order to induce Karr to rent the house to them and then conspired to run down the property by "inflicting deliberate damage and refusing to arrange appropriate professional inspections and repairs. Then, once the damage was done, [Hook] and the Cocos used the pretense that [the property was] subject to unrepairable problems in an attempt to deceive Karr into selling the [property] at a much reduced price, all while creating false documentation in order to sue Karr for alleged illnesses the Cocos suffered as a result of the deliberate damage the Cocos inflicted on [the property]." (Capitalization omitted.) Thus, the Karr cross-complaint alleged Hook committed active negligence, (and affirmative intentional misconduct), not passive negligence. Even though the jury found Hook's negligence was not a substantial factor in causing harm to Karr and/or Kelley, Hook is seeking indemnity for attorney's fees she incurred in defending against charges of active negligence, which the jury found true.

The question for us, then, is whether the parties' agreement reasonably can be read to include indemnification for active negligence. The indemnity clause does not specifically address Hook's negligence. Therefore, it is a general indemnity clause. As such, Hook may be indemnified arising out of her own active negligence only if there is some showing this was what the parties intended. Hook has made no such showing. Nothing in the agreement or the circumstances indicates the parties intended to indemnify Hook from liability for her own active negligence. (Cf. *Queen Villas Homeowners Assn. v. TCB Property Management* (2007) 149 Cal.App.4th 1, 9.) Accordingly, Hook is not entitled to indemnification under the agreement, and the trial court's ruling on this issue was correct.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

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RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

BIGELOW, J.